

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FRANZISKA I. COLLIER, *et al.*,
Plaintiffs,
v.
PARADISE HILLS CONVALESCENT
CENTER, *et al.*,
Defendants.

Civil No. 08cv969-L(POR)

**ORDER REMANDING ACTION TO
STATE COURT**

On May 30, 2008, Defendants Celestine Arambulo, D.O., Kaiser Foundation Hospitals, Southern California Permanente Medical Group and Kaiser Foundation Health Plan, Inc. ("Removing Defendants") filed a notice of removal, removing this medical negligence and wrongful death action from state court. The notice of removal is based on 28 U.S.C. §§ 1441 and 1331.


The federal court is one of limited jurisdiction. *See Gould v. Mutual Life Ins. Co. of N.Y.*, 790 F.2d 769, 774 (9th Cir. 1986). It possesses only that power authorized by the Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). It is constitutionally required to raise issues related to federal subject matter jurisdiction, and may do so *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998); *see Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). "The burden of establishing federal jurisdiction is on the party seeking removal, and the removal statute is strictly construed

1 against removal jurisdiction." *Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d 709, 712
2 n.3 (9th Cir. 1990).

3 In addition to the Removing Defendants, the complaint names Paradise Hills
4 Convalescent Center as a Defendant. This Defendant has not joined in the removal. "Section
5 1446 requires all proper defendants to join or consent to the removal notice." *Prize Frize, Inc. v.*
6 *Matrix (U.S.), Inc.*, 167 F.3d 1261, 1266 (9th Cir. 1999), overruled on other grounds in *Abrego*
7 *Abrego v. The Dow Chem. Co.*, 443 F.3d 676 (9th Cir. 2006). "Where fewer than all the
8 defendants have joined in a removal action, the removing party has the burden under section
9 1446(a) to explain affirmatively the absence of any co-defendants in the notice for removal." *Id.*
10 No attempt to explain is made in the notice of removal. Accordingly, the notice of removal is
11 defective on its face, and the case is **REMANDED** to the Superior Court of the State of
12 California for the County of San Diego, Central Division.

13 **IT IS SO ORDERED.**

14
15 DATED: June 30, 2008

16 
17 M. James Lorenz
United States District Court Judge

18 COPY TO:

19 HON. LOUISA S. PORTER
UNITED STATES MAGISTRATE JUDGE

20 ALL PARTIES/COUNSEL
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